a condition of granting the permit, and that the statute was not separable into parts, and it was held that the requirement of such stipulation was void. It was not held that such a statute as the one of Kentucky, now under consideration, was void. Such statute enacts no agreement or stipulation in any form or in any part of the statute." It is to be noted further, that *Barron* v. *Burnside* did not present the question as to whether a state can actually revoke a license on the ground discussed. The facts of the case were quite different from those in the other two cases. Mr. JUSTICE DAY argued finally that if the state can make the right to transact business dependent upon the surrender of one constitutional right it may do so upon the surrender of all. A late case which denies the right to revoke on the ground of removal is *Com.* v. *East Tenn. Coal Co.* (1895), 97 Ky. 238.

HUSBAND AND WIFE—PURCHASE BY WIFE OF HUSBAND'S PROPERTY AT TAX SALE—DUTY TO PAY TAXES.—A wife purchased her husband's one-third interest as tenant in common of a parcel of land at a tax sale with her own separate funds, and subsequently joined with him in executing a deed of conveyance to a third party. In an action to have the tax deed adjudged void, *Held,* that the grantee in the husband's and wife's conveyance took a perfect title. *Nagle* v. *Tieperman* (1906), — Kan. —, 85 Pac. Rep. 941.

The decision in this case is an important one in view of the fact that the court overrules former decisions on this point, and thereby places a most liberal construction on the Married Women's Act of Kansas. Dower is abolished in Kansas, and the wife upon her husband's death takes one-half of all the real estate, in which the husband at any time during the marriage had a legal or equitable interest, which has not been sold on execution or other judicial sale, and is not necessary for the payment of debts, and of which the wife has made no conveyance. The only question in the case is whether a wife who is not in the possession and not deriving benefits from the land of her husband, can with her separate means acquire the title to such land through a tax deed. That a wife has such a present interest in the lands of her husband that she cannot become a purchaser by tax deed was held in *Busenbark* v. *Busenbark,* 33 Kan. 572; *Munger* v. *Balbridge,* 41 Kan. 236; *Laton* v. *Balcom,* 64 N. H. 92, 10 Am. St. Rep. 381; *Warner* v. *Broquet,* 54 Kan. 649. The court in the last case said, "Both husband and wife have an interest, either direct or indirect in each other's real estate. These interests and the natural confidences which ought to exist between husband and wife forbid either from obtaining a tax title upon the land of the other." This is now overruled by the principal case. That the wife has not such an interest was held in *Broquet* v. *Warner,* 43 Kan. 48; *Harrington* v. *Lowe,* 84 Pac. Rep. 570; *Willard* v. *Ames,* 130 Ind. 351; *Carter* v. *Bustamente,* 59 Miss. 559. As a general rule, a tenant in common cannot acquire title against his cotenants by purchase at a sale for taxes. *Johns* v. *Johns,* 93 Ala. 239; *Emeric* v. *Alvarado,* 90 Cal. 444; *McChesney* v. *White,* 140 Ill. 330. It is also a general rule that one can acquire title to real property under tax title, where there is no legal obligation or duty on his part to pay the taxes. *Bennet* v. *N. Col. Springs Land Co.,* 23 Col. 470, 56 Am. St. Rep. 281; *University Bank*

v. *Athens Savings Bank,* 107 Ga. 246; *Oswald* v. *Wolf,* 129 Ill. 200; *Smith* v. *Newman,* 62 Kan. 318; *Blackwood* v. *Van Vleit,* 30 Mich. 118; *Powell* v. *Lantzy,* 173 Pa. St. 543; *Miller* v. *Donahue,* 96 Wis. 498. Applying these general doctrines to the Kansas case, it seems that the court has placed the proper interpretation on the statute, although Mr. JUSTICE GREENE filed a strong dissenting opinion, concurred in by Mr. CHIEF JUSTICE JOHNSTON. The decision shows the modern tendency of courts to draw away from the single unity theory of husband and wife and to give the fullest effect to statutes which have for their purpose the enlargement of the wife's common law rights.

JUDGMENT—AMENDMENT—JURISDICTION.—The plaintiff brought suit upon a promissory note, service of summons was regularly made upon the defendant, who did not appear and his default was entered. After the default was entered and before judgment the plaintiff was allowed by the court to amend its complaint by the insertion of an allegation of waiver of exemption. After the close of the term in which the judgment was rendered, the defendant made a motion to amend the judgment by striking out the waiver of exemption. On appeal from an order granting this motion, *Held,* that the court had no jurisdiction over the record after the close of the term except as to formal defects and judgments void on their face. It was further held that an amendment of the original complaint made without notice to the defaulting defendant was not such a substitution of a new cause of action as to take away jurisdiction on the ground of not giving the defendant a day in court. *A. G. Story Mercantile Co.* v. *McClellan* (1906), — Ala. —, 40 So. Rep. 123.

Upon this latter holding the authorities are not uniform. There is a line of cases which seem to hold a view contrary to this case. The ground upon which these decisions are based is that a material amendment constitutes a substitution of a new cause of action. See, *Watson* v. *Miller,* 69 Tex. 175; *Franklin* v. *Houston,* 22 Tex. Civ. App. 459; *Wortham* v. *Boyd,* 66 Tex. 401, 1 S. W. 109. Such a substitution after default entered opens the default. *Thompson* v. *Johnson,* 60 Calif. 292; *Thomas* v. *McGuinness,* 94 Ill. App. 248. After the default is opened, it is necessary that service of the amended complaint be made upon the defendant and an opportunity given to plead in order that the court may enter judgment by default. *Brown* v. *Tuttle,* 27 Ill. App. 389; *People* v. *Woods,* 4 N. Y. Sup. Ct. (2 Sandf.) 652; *Littlefield* v. *Schmoldt,* 24 Ill. App. 624; *Perryman* v. *Smith* (Tex.), 32 S. W. 349; *Morrison* v. *Walker,* 22 Tex. 18. Some other cases seem to hold that so much of the judgment as was based upon the original complaint is valid, and that only so much is void as results from the amendment. *Lee* v. *Hamilton,* 12 Tex. 413; *Weatherford* v. *Van Alstyne,* 22 Tex. 22; *Bennett* v. *Cary,* 72 Iowa 476. A comparatively recent case in New York would seem to accord with the doctrine of the Alabama court. *Car & Hobson* v. *Sterling,* 114 N. Y. 558. In this case it was held that an amendment to a petition increasing the money demand and made without notice to the defendant did not invalidate a judgment. Jurisdiction having been acquired by service under the original complaint, the court had the right to amend the bill and the defendant had no right to notice in such a sense that the judgment would be void. The judgment would at most be erroneous and subject to revision on appeal.